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263 NLRB No. 178

D--9242
Camden, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAMDELPHIA ENTERPRISES, INC.

and

Case 4--CA--12729

TEAMSTERS LOCAL 676, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

DECISION AND ORDER

Upon a charge filed on March 2, 1982, and amended on April 7, 1982, by Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Camdelphia Enterprises, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 4, issued a complaint on April 15, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

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On July 6, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.¹ Subsequently, on July 26, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

¹ On July 22, 1982, counsel for the General Counsel resubmitted the Motion for Summary Judgment with additional exhibits.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer to the complaint was filed within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." No answer has been received.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true, and we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a Pennsylvania corporation which, until on or about February 16, 1982, engaged in the sale of lumber and the fabrication and sale of windows and related products from its Camden, New Jersey, facility. During the past year, Respondent derived gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

At all times material herein, Respondent and the Union have been parties to a collective-bargaining agreement effective from August 1, 1979, to July 31, 1982. Pursuant to the agreement, Respondent has recognized the Union as the exclusive representative of the employees of Respondent in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On or about February 16, 1982, Respondent ceased that portion of its business involving the sale of lumber without affording the Union an opportunity to bargain about the effects on bargaining unit employees of Respondent's action. Respondent has also refused, since on or about February 16, 1982, to recognize the Union as the exclusive representative of Respondent's employees engaged in the fabrication and sale of windows and related products, and has refused to abide by the parties' collective-bargaining agreement. Further, on or about February 16, 1982, Respondent discharged employees Andrew Flowers and John Flowers because they were members of the Union and represented by the Union. Respondent, at all times since then, has failed to reinstate them to perform work in the fabrication and sale of windows and related products.

Accordingly, we find that Respondent violated Section 8(a)(5) and (1) of the Act by failing to afford the Union an opportunity to bargain about the effects on bargaining unit employees of its decision to cease that portion of its business involving the sale of lumber. We find that Respondent further violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on or about February 16, 1982, as the exclusive-bargaining representative of bargaining unit employees. We also find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Andrew Flowers and John Flowers because of their membership in the Union.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order Respondent to bargain with the Union, upon request, about the effects on bargaining unit employees of Respondent's termination of that portion of its

business involving the sale of lumber. Under the circumstances, a bargaining order alone is an inadequate remedy since Respondent's unlawful failure to bargain at the time of the termination of the lumber-selling operation denied the employees an opportunity to bargain through their collective-bargaining representative at a time when Respondent was still in need of their services and when there would have been some measure of balanced bargaining power. Therefore, in order to effectuate the policies of the Act and to assure meaningful bargaining, we shall order Respondent to pay those employees who suffered losses by reason of Respondent's failure to bargain amounts at the rates of their normal wages when last in Respondent's employ, from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on bargaining unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of issuance of this Decision, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of the employees exceed the amount he would have earned as wages from the date of which Respondent ceased its lumber-selling operation, to the time he secured equivalent employment elsewhere, or the date upon which Respondent announces its willingness to bargain, whichever occurs sooner; provided, however, that in no event shall the sum be less than these

employees would have earned for a 2-week period at the rate of their wages when last in Respondent's employ.² Interest on all such sums shall be paid in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).³

Further, we shall order Respondent to recognize the Union as the exclusive representative of bargaining unit employees, and to offer Andrew Flowers and John Flowers immediate and full reinstatement and to make them whole for any loss of earnings they may have suffered by reason of their unlawful discharge. Backpay is to be paid as prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in Florida Steel Corporation, supra.⁴

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Camdelphia Enterprises, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

² See Transmarine Navigation Corporation and its subsidiary, International Terminals, Inc., 170 NLRB 389, 390 (1968); see also Interstate Gopher News, d/b/a Gulf and Southern News, 235 NLRB 851 (1978); and Interstate Tool Co., Inc., 177 NLRB 686 (1969).

³ See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

⁴ See, generally, Isis Plumbing & Heating Co., supra.

3. The above-named labor organization has been and now is the exclusive representative of employees in an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By failing to afford the Union an opportunity to bargain about the effects on bargaining unit employees of the termination of its lumber-selling operation on or about February 16, 1982, Respondent has violated Section 8(a)(5) and (1) of the Act.

5. By withdrawing recognition from the Union, as the exclusive representative of bargaining unit employees on or about February 16, 1982, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. By discharging employees Andrew Flowers and John Flowers on or about February 16, 1982, because of their union membership and representation, Respondent has violated Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Camdelphia Enterprises, Inc., Camden, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with the Union with respect to the effects on bargaining unit employees of its

decision to cease that portion of its business involving the sale of lumber.

(b) Failing and refusing to recognize the Union as the exclusive representative of bargaining unit employees.

(c) Discharging or otherwise discriminating against employees for their membership in and representation by the Union.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole its employees by paying those employees who suffered losses when Respondent ceased its lumber-selling operation normal wages plus interest for the period and in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(b) Upon request, bargain collectively with the Union with respect to the effects on bargaining unit employees of its decision to cease that portion of its business involving the sale of lumber.

(c) Recognize the Union as the exclusive representative of bargaining unit employees.

(d) Offer Andrew Flowers and John Flowers immediate and full reinstatement, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings they may have

suffered by reason of its unlawful action against them in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(e) Expunge from Andrew Flowers' and John Flowers' personnel records, or other files, any reference to their discharge on or about February 16, 1982, and notify them in writing that this has been done and the evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Camden, New Jersey, facility copies of the attached notice marked "'Appendix.'"⁵ Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(h) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. September 21, 1982

John R. Van de Water, Chairman

John H. Fanning, Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on bargaining unit employees of the decision to cease that portion of our business involving the sale of lumber.

WE WILL NOT fail and refuse to recognize Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of bargaining unit employees.

WE WILL NOT discharge or otherwise discriminate against employees because of their membership in and representation by Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL make employees whole by paying those employees who suffered losses by reason of our termination of our lumber-selling operation wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL, upon request, bargain collectively with Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on bargaining unit employees of our decision to cease that portion of our business involving the sale of lumber, and WE WILL reduce to writing any agreement reached as a result of such bargaining.

WE WILL recognize Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of bargaining unit employees.

WE WILL offer Andrew Flowers and John Flowers immediate and full reinstatement, without prejudice to their seniority or any other rights for any loss of earnings they may have suffered by reason of their unlawful discharge.

WE WILL expunge from our files any references to the discharge of Andrew Flowers and John Flowers on or about February 16, 1982, and WE WILL notify them that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

CAMDELPHIA ENTERPRISES, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1 Independence Mall, 7th Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone 215--597--7643.